

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEBRA ROJAS	*	Civil Action No. 1:19-CV-0775-JRN
V.	*	
TOLTECA ENTERPRISES INC. & TRAVELERS CASUALTY AND SURETY CO. OF AMERICA	*	
	*	

**DEFENDANT TOLTECA’S ORIGINAL COUNTERCLAIM AGAINST
THE PLAINTIFF**

Defendant Tolteca Enterprises Inc., dba The Phoenix Recovery Group counterclaims against the Plaintiff to recover its costs and attorney fees in this suit.

1. Tolteca is entitled to recover its costs and attorney fees under the Federal Fair Debt Collection Practices Act and the Texas Debt Collections Act.

2. The FDCPA provides for recovery of costs and attorney fees when a debt collector is sued in bad faith and for the purpose of harassment. “On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney’s fees reasonable in relation to the work expended and costs”. 15 USC §1692(a)(3).

3. The TDCP provides for recovery of costs and attorney fees when a debt collector is sued in bad faith *or* for the purpose of harassment. “On a finding by a court that an action under this section was brought in bad faith or for the purposes of harassment, the court shall award the defendant attorney’s fees reasonably related to the work performed and costs.” Tex. Fin. Code §392.403(c),

4. Plaintiff's suit against Tolteca is a bad faith lawsuit and Plaintiff seeks to harass Defendant with her lawsuit. The lawsuit is in bad faith because Tolteca did not know that the debt was allegedly inaccurate. Plaintiff did not seasonably dispute the debt and therefore her debt was presumptively valid and owed. Another indication of bad faith is that Plaintiff claims Tolteca misrepresented the debt. Untrue and denied. The debt was valid and Tolteca has a provable defense of bona fide error which insulates Tolteca from liability. Another indication of bad faith is that it was sued for claims about various charities. The claim was tossed out for failure to state a claim upon which relief may be granted and due to lack of standing.

5. Plaintiff's lawsuit is frivolous, groundless, and vexatious. Plaintiff should pay Tolteca's costs and attorney fees because Plaintiff's lawsuit is an abuse and constitutes harassment.

WHEREFORE, Defendant sues Plaintiff to recover its costs and attorney fees for defending itself in the lawsuit Plaintiff has brought against Defendant.

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CERTIFICATE OF SERVICE

The foregoing motion has been e-filed on February 26, 2020, with the court's CM/ECF electronic filing system which will give electronic notice to Tyler Hickie, attorney for the Plaintiff.

S/Tom Clarke